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厦门大学

硕士学位论文

美国法上的失业补偿金受领资格的
司法认定对宗教信仰自由的保障与限制

Protection and Restriction of Religious Freedom in Terms of
the Judicial Rulings on the Entitlement to Unemployment
Compensation under American Legal System

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内容摘要

本文试图分析美国法上失业补偿金的受领资格与宗教信仰自由之保障的关系。由于美国的法院是宪法问题的最终裁判者，故本文以美国各级法院的判决为主要分析对象，以实证法为出发点，厘清作为国家“生存照顾”义务之一环的失业补偿金发放与作为公民之“消极自由”的宗教信仰自由之间的纠结关系。

第一章将分析 1963 年之前各州法院对此类案件的裁判。这一时期的州法院在面对此类案件时，完全回避对宪法问题进行判断。其解决问题的路径是解释各州《失业补偿金法》中的相关条款，从而给予失业补偿金申请人以充分的救济。但此种裁判进路具有明显的缺陷。

第二章将分析联邦最高法院就此类问题做出的五个判决。其中舍尔博特案、托马斯案、霍比案与弗拉基案的判决皆遵循了“不可抗拒的州利益”标准，而史密斯案的判决则适用了“附带性效果”标准。尽管适用两种标准的判决结果迥异，但两项标准亦都存在缺陷。

第三章将分析联邦最高法院的判决对国会立法的影响及对联邦下级法院与各州法院的拘束力。史密斯案所确立的标准在国会遭到抵制，在司法领域亦几乎无适用之余地。

第四章将对前文的描述与分析进行学理上的阐释。本章将论证为何宗教信仰自由需要依赖政府给付方可实现，并分析此种给付义务如何应对源自禁止确立国教条款的质疑。

关键词：失业补偿金；司法认定；宗教信仰自由

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ABSTRACT

This discourse attempts to analyze the relationship between the qualification to receive unemployment compensation and the protection of religious freedom under American law. As courts are the final referendary of constitutional issues in the United States, this discourse, therefore, mainly analyzes the rulings issued by courts at different levels in America and clarifies the perplexing relationship between the issuance of unemployment compensation, known as a segment of a nation's obligation of "subsistence tendance", and religious freedom, known as citizen's negative liberty.

Chapter 1 analyzes rulings on such cases issued by courts of different states by the year of 1963. When facing with such cases during this period, state courts avoided answering constitutional questions. The approach they chose to solve the problem was to interpret relative clauses in Unemployment Compensation Law enacted by different states; hence, the petitioners might obtain sufficient relief. This approach, however, is of obvious shortcomings.

Chapter 2 analyzes five rulings issued by the Supreme Court of the United States on such cases. The test of "compelling state interest" were observed in Sherbert case, Thomas case, Hobbie case and Frazee case; and the ruling of Smith case complies with the test of "incidental effect". Opposite rulings had been deprived when these two tests were applied separately, but deficiencies exist in both of them.

Chapter 3 analyzes how the Supreme Court's rulings had influenced Congress legislation and how they had bound lower federal courts and state courts. The test established in Smith case was boycotted in Congress and had hardly ever been applied in judicial sphere.

Chapter 4 conducts theoretical interpretation, based on the descriptions and analyses aforesaid. This chapter demonstrates why the implementation of religious freedom relies on governmental aid, analyzing how the obligation of governmental aid copes with the challenge derived from the Establishment Clause.

Key words: unemployment compensation; judicial rulings; religious freedom

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